

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1220

SPONSOR: Committee on Judiciary and Senator Fasano

SUBJECT: Sale of Real Property

DATE: March 25, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Greenbaum</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CP</u>	_____
3.	_____	_____	<u>CM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates a requirement on a seller of real property in a deed restricted community to provide a copy of the restrictive covenants to the deed that apply to the property. The term “deed-restricted community” is defined. Each contract for the sale of real property in such a community must include a clause which either indicates that the buyer acknowledges the receipt of such deed restrictions more than three days prior to the execution of the contract, or that the contract is voidable within three days of receipt of the restricted covenants or the execution of the contract, whichever is later. This bill provides that a contract which does not conform to such requirements of the bill is voidable at the option of the buyer prior to the time of closing.

This bill creates an unnumbered section in the Florida Statutes.

II. Present Situation:

Standard form contracts for the sale of real property by a non-developer seller to a non-developer purchaser are required to indicate that the purchaser is on notice of restricted covenants on the property. *See* Ralph Boyer, Florida Real Estate Transactions, § 4.25; ch. 24 (2002). However, sellers are not required to provide a copy of the restricted covenants, and neither the purchaser nor anyone associated with the purchaser are obliged to obtain a copy of the restricted covenants prior to executing the contract.

III. Effect of Proposed Changes:

This bill directs the seller who is not the developer of a piece of real property in a deed restricted community to provide to the buyer of such property a current copy of the deed restrictions that apply to the property. This bill provides that a person licensed under part I of chapter 475, F.S.,

i.e., real estate brokers and salespersons, who obtains the documents that contain the restrictive covenants to the deed is not liable for errors or inaccuracies contained in the documents.

Each contract for the sale of property in a deed restricted community must contain one of two clauses:

- That the buyer acknowledges that he or she has been provided a current copy of the restrictive covenants for more than three days prior to the execution of the contract; or
- That the contract is voidable by the purchaser by delivery of written notice within three days of the date of execution of the agreement or the receipt by the buyer of a current copy of the deed restrictions, whichever is later; that any purported waiver of the voidability rights has no effect; that the buyer may extend the time to closing by three days, excluding Saturdays, Sundays, and legal holidays; and that the buyer's right to void the agreement terminates at closing.

A contract that does not conform to this section is voidable at the option of the buyer prior to closing.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will provide an extra measure of disclosure in those instances where real property in a deed-restricted community is purchased from a non-developer. Arguably the additional notice will give such purchasers the opportunity to examine the restrictive covenants for the property for restrictions which may interfere with certain activities of the purchaser. Such review may allow for reconsideration of the purchase where the restrictions may prove too onerous for the purchaser.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is patterned after the disclosure requirements found in s. 718.503(2), F.S., requiring the non-developer seller of a condominium unit to provide a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association and a copy of certain financial information; providing a waiver of liability for errors and inaccuracies for real estate brokers and salespersons who provide such documents; providing for inclusion in the contract either a buyer acknowledgement clause or a buyer voiding clause; and providing that any contract that does not conform to the provisions of the paragraph is voidable at the option of the purchaser prior to closing.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
